

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEBERG, LISA STEIN and AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER, ALEXBAY, LLC f/k/a LESTER EBER, LLC,
ESTATE OF ELLIOT W. GUMAER, JR. and WENDY EBER,

Defendants,

and

EBER BROS. & CO, INC., EBER BROS. WINE AND LIQUOR
CORP., EBER BROS. WINE & LIQUOR METRO, INC., EBER-
CONNECTICUT, LLC, EBER-RHODE ISLAND, LLC, EBER BROS.
ACQUISITION CORP., EBER-METRO, LLC, SLOCUM & SONS
OF MAINE, INC., and CANANDAIGUA NATIONAL BANK &
TRUST COMPANY,

Nominal Defendants.

Civil Action No.
16-CV-9517(LAK/KHP)

**AFFIDAVIT OF
MICHAEL A.
GALLAGHER**

STATE OF NEW YORK)
) ss:
COUNTY OF MONROE)

Michael A. Gallagher, being duly sworn, deposes and states as follows:

1. I am the President of Benefits Management, Inc. ("Benefits Management"), and an actuary. I am a member of the Society of Actuaries.

2. Benefits Management is an independent actuarial consulting firm providing consulting services and administrative services to individuals and corporations who maintain qualified pension and profit-sharing plans, or who need actuarial or consulting services in connection with their post-retirement benefit program.

3. In December of 2018, Wendy Eber requested that Benefits Management provide the Plan Termination Liability for Eber Bros. Wine & Liquor Corp. Retirement Plan as of June 1, 2012 (the "Retirement Plan").

4. By letter dated December 19, 2018, I wrote to Ms. Eber and provided our analysis regarding the accrued liability under the Retirement Plan. A copy of my December 19, 2018 letter is attached as Exhibit A.

5. As of June 1, 2012, the Retirement Plan had 185 participants in pay status, and 240 participants who no longer were active employees, but were entitled to future benefits.

6. According to my calculations, this resulted in a liability of \$6,268,918 relating to those in pay status, and \$3,554,259 relating to those entitled to future benefits, for a total liability of \$9,823,177.

7. The Retirement Plan Assets held at Canandaigua National Bank ("CNB") as of May 31, 2012 were reported to be \$4,759,789.

8. Accordingly, given the total the liability of \$9,823,177, an additional deposit of \$5,063,388 as of June 1, 2012 would have been required to satisfy the Retirement Plan's liability for all benefits to all participants.


MICHAEL A. GALLAGHER

Sworn to before me this
 day of November, 2019.


NOTARY PUBLIC

CRAIG A WELKER
Notary Public - State of New York
No. 01WE6354867
Qualified In Ontario County
My Commission Expires 02/21/2021